



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 24, 1991

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Use of the Interim Measures ARAR Waiver

FROM: Larry Starfield
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TO: Steve Golian, Chief
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Office of Emergency and Remedial
Response (OS-220W)

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Compliance Section
CERCLA Compliance Division
Office of Waste Programs
Enforcement (OS-510)

I have reviewed your memorandum of March 8, 1991, and concur in the planned use of the interim action waiver at the Wasatch Chemical Superfund site. The statute provides that an applicable or relevant and appropriate requirement (ARAR) of another federal environmental law may be waived for an on-site Superfund response action where, e.g., "the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed." CERCLA section 121(d)(4)(A), 42 U.S.C. 9621(d)(4)(A).

As I understand the facts, hazardous wastes to which the RCRA land disposal restrictions apply are located on-site, but not all within the same Area of Contamination (AOC). Under RCRA, restricted hazardous wastes may not be moved into an AOC (i.e., "placed") until they have been treated using Best Demonstrated Available Technology (BDAT). CERCLA section 121(d)(2) requires remedial actions to attain, or justify a waiver of, such a requirement.

In the case you raise, the initial phase of the remedy calls for the placement of the wastes in a concrete vault; the final remedy would then treat those wastes by in-situ vitrification, which will result in the attainment the BDAT treatment

standards.¹ Accordingly, the "total remedial action ... will attain such level or standard of control when completed," and the use of the interim measures waiver is appropriate.

To the extent that similar findings could be made for other in-situ technologies (e.g., biological farming), it may also be possible to invoke the interim action waiver.

cc: Carrie Wehling, OGC

¹ Of course, if the in-situ vitrification approach does not meet the BDAT standard, then the remedy would need to be reconsidered.